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PATENT
Attorney Docket No. 05793.3033-00000

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
)	
Arthur KOEPEL et al.)	Group Art Unit: 3626
)	
Application No.: 09/660,495)	Examiner: C. Gilligan
)	
Filed: September 12, 2000)	
)	
For: SYSTEM AND METHOD FOR)	Confirmation No.: 6314
PERFORMING WEB-BASED IN-)	
VIEW MONITORING)	

Attention: Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

REPLY BRIEF UNDER 37 C.F.R. § 41.41

Pursuant to 37 C.F.R. § 41.41, Appellants present this Reply to the Examiner's
Answer dated September 5, 2007.

ARGUMENT

The Examiner responds to several arguments raised by Appellants in the Supplemental Brief filed July 13, 2005. See Examiner's Answer at 6-10. Appellant addresses each of the Examiner's positions in turn below.

1. ***Himmel et al.* and *Mason et al.* do not teach or suggest collecting data reflecting in-view user activities, as recited in claims 40-42, 51-53, and 62-64.**¹

The Examiner argues that data reflecting how much time an advertisement is viewable on a Web page "is a form of 'proportion of content actually viewable to a user,' given the broadest reasonable interpretation to one of ordinary skill in the art." *Examiner's Answer* at 7. Indeed, the Examiner corresponds these aspects of Appellants' claimed invention to a comparison of time values when content is viewable. *Id.* That is, the Examiner takes the position that comparing five minutes of visible time of content is a larger "proportion of content actually viewable to a user" than three minutes of visible time. *Id.* This comparison to Appellant's claims is both unreasonable and incorrect.

The Examiner also asserts Appellants' argue that the distinction between the prior art and claims 40-42, 51-53, and 62-64 lies in the that the collected data is "limited

¹ Appellants point out that the Examiner continues to cite *Mason et al.* to teach "modifying the content of the Web page based on the user in-view characteristic data, as admitted as missing from *Himmel et al.* See Examiner's Answer at 4. This limitation, however, is not present in independent claims 40, 51 and 62. Instead, these limitations were cancelled in the Amendment filed December 22, 2004 and entered by the Examiner in the Advisory action mailed January 14, 2005.

to a percentage or fraction of visible space on a screen.” *Id.* The Examiner misses the point.

Claim 40, for example, recites,

detecting in-view user activities associated with each respective user browsing the Web page, wherein ***the in-view user activities are associated with in-view response data reflecting whether or not the content data was viewable or partially viewable to each respective user,***

collecting data reflecting the in-view user activities, wherein ***the collected data includes information indicating the proportion of content actually viewable to a respective user . . .***

(emphasis added).

Regardless whether the “collected data” recited in these claims represent a percentage or fraction of visible space of content, the fact remains that *Himmel et al.* merely provides time data reflecting an amount of time an advertisement was visible. This time data is in no way, under any reasonable interpretation, collected data that includes information indicating the proportion of content actually viewable to a respective user, as recited in claims 40-42, 51-53, and 62-64.

Although the Examiner is entitled to interpret claim terms broadly, such interpretation cannot be unreasonable nor can it be inconsistent with the specification. Indeed, M.P.E.P. § 2111 indicates “pending claims must be given their broadest reasonable interpretation consistent with the specification.” While the Examiner may not be required “to interpret claims in applications in the same manner as a court would interpret claims in an infringement suit,” the Examiner is required to apply “to verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary

usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in applicant's specification." *Id.* Accordingly, the broadest reasonable interpretation of "information indicating the proportion of content actually viewable to a respective user" must be consistent with the interpretation of the term that those skilled in the art would have reached. See *Id.* A user who receives information showing five minutes of viewable time is not privy to the proportion of content actually viewable.

Here, the Examiner incorrectly asserts data reflecting an amount of time an advertisement was viewable is equivalent to the "collected data" recited in claims 40-42, 51-53, and 62-64. This assertion is not consistent with the interpretation of the phrase as was known in the art and in the context of Appellants' specification, and it is contrary to at least the policies governed by the M.P.E.P.

As explained in Appellants' Brief, and acknowledged by the Examiner, *Himmel et al.* only tracks the amount of time an advertisement is fully visible on a Web page. See *e.g., Appellants' Supplemental Brief* at 17. The Examiner's leap from this type of information to show information indicating the proportion of content actually viewable to a respective user is conjecture. The plain language of the claim, as well as the phrases' meaning in the context of Appellants' specification, is clear; the claimed "information" is not indicating an amount of time content is viewable. Nor does *Himmel et al.* indicate that the time data monitored is a "form of proportion of content actually viewable to a user." as alleged by the Examiner. *Examiner's Answer* at 7.

Further, the Examiner's example of comparing five minutes to three minutes of viewable time misses the mark two fold regarding Appellants' claims 40-42, 51-53, and 62-64. First, the amount of visible time does not show a proportion of content actually viewable to a user. It simply reflects time information. Second, the Examiner does appear to appreciate that these claims require detecting in-view user activities associated with each respective user browsing the Web page including content data, and that the in-view user activities are associated with in-view response data reflecting whether or not the content data was viewable or partially viewable to each respective user. Thus, comparing the amount of time of two separate viewing events does not demonstrate, in the context of these claims, collecting data reflecting the in-view user activities collected data including information indicating the proportion of content actually viewable to a respective user. These are two separate events and the Examiner's comparison of the two reflect a proportion of time between those two distinct events and not a proportion of content actually viewable for a respective user browsing a Web page. Accordingly, the Examiner's position is unreasonable and should not be adopted by the Board.

Also, the Examiner again takes a large leap in associating the amount of time content is visible to information indicating the proportion of content actually viewable. Simply because *Himmel et al.* tracks the time when content is completely visible does not result in the reference showing collecting data, as recited in these claims. Instead, it merely shows what *Himmel et al.* is limited to: the ability to track the amount of time an advertisement is visible.

Moreover, the Examiner also contradicts the position that *Himmel et al.* teaches or suggests claims 40-42, 51-53, and 62-64 by alleging *Himmel et al.* ability to record visible time information reflects a 100% proportion of content actually viewable to a user. The Examiner alleges that the only limitations of these claims directed to “partially viewable” is recited in the alternative. *Examiner’s Answer* at 7. Thus, according to the Examiner, *Himmel et al.*’s ability to track the amount of time an advertisement is completely visible corresponds to “whether or not the content was viewable,” as recited in Appellants’ claims. Yet, this position does not explain why *Himmel et al.* would have the need to analyze the time data to “determine user in-view characteristic data reflecting whether the content was viewable or partially viewable by the respective user.” Indeed, the reference does not. Claim 40, for example, recites, “analyzing the collected data to determine user in-view characteristic data reflecting whether the content was viewable or partially viewable by the respective user.” Thus, the alternative language used in Appellants’ claims 40-42, 51-53, and 62-64 does not preclude the prior art from teaching this analysis step. If, as admitted by the Examiner, *Himmel et al.* tracks the amount of time an advertisement was completely visible, there is no need for *Himmel et al.* to analyze such information to determine data reflecting whether the content was viewable, much less partially viewable because according to the Examiner, the content is always viewable when the time is tracked. Such a position cannot be reconciled in light of the plain language of claims 40-42, 51-53, and 62-64 and/or in light of the claimed invention in the context of Appellants’ specification.

2. ***Himmel et al.* and *Mason et al.* do not teach or suggest a client side trigger event appended to a URL, as recited in claims 43, 54, and 65.**

The Examiner again improperly takes an unreasonable position in interpreting Appellants' claims. As mentioned above, the Examiner is required to apply "to verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in applicant's specification." M.P.E.P. § 2111.

Here, the Examiner asserts that because the Advertising Control Module (ACM) is downloaded to a client in response to a client requesting a URL, the ACM is considered to be "appended" to the URL. Such a position is unreasonable in light of the plain language of Appellants' claims and the meaning of its terms in light of Appellants' specification. As explained in its Brief, ACM is an applet that is downloaded with Web page 194. *See Supplemental Brief* at 23. The client side routine recited in claim 43, for example, is a program that is appended to a URL, which is placed on the Web page. The ACM is downloaded and executed "during the downloading of web page 194." *Id.* Nowhere does *Himmel et al.* teach or suggest a client side routine that is appended to a URL that is placed on the Web page that is browsed by a user. The Examiner's interpretation of the term "appended" is unreasonable and inconsistent with the requirements for claim interpretation. While the Examiner looks for support of this interpretation because the ACM "is so clearly associated with the URL." *Examiner's Answer* at 8. Yet, this position ignores the plain meaning of the term and language of claims 43, 54, and 65, and the use of the term "appended" that is well known in the art and used in the context of Appellants' specification. Instead, the Examiner finds a

definition of the term “appended” to fit his position instead of construing the term as required by U.S. Patent rules and legal precedent.

3. *Himmel et al.* and *Mason et al.* do not teach or suggest a client side trigger event, as recited in claims 44-46, 55-57, and 66-68.

The Examiner takes the position that because claims 44-46, 55-57 and 66-68 use the term “associated” with a trigger event, *Himmel et al.* teaches the claimed invention recited in these claims. Appellants respectfully disagree.

Even if the term “associated with” is given the interpretation taken by the Examiner, *Himmel et al.* does not support the rejection of these claims. Merely because ACM stores data and sends time information when an interval time has been reached does not demonstrate that *Himmel et al.* teaches a client side trigger event associated with a client side data store being filled with the collected data above a predetermined threshold level. A time interval is not the same as a threshold level for a client side data store. The former is temporal based, and the later is based on the data store’s physical memory. Such a distinction cannot be ignored. Accordingly, regardless of the Examiner’s interpretation of the term “associated,” *Himmel et al.* does not teach or suggest a client side trigger event as recited in claims 44, 55, and 66.

Further, the Examiner again unreasonably relates sending data in a cookie after a user connects to the Internet as teaching a client side trigger event associated with a user closing a browser application. A simple example demonstrates the deficiency in the Examiner’s argument. According to the Examiner’s position, the cookie is sent after a connection to the Internet is established. Claims 45, 56, and 67, however, require a user to close a browser application. Connecting to the Internet and closing a browser

application, which may in some instances eventually disconnect one from the Internet, are two different events and are not synonymous.

Also, the Examiner takes an unreasonable position in alleging *Himmel et al.*'s downloading of the ACM when a user selects a URL to the client side trigger event recited in claims 46, 57, and 68. These claims require a client side trigger event being associated with a user selecting a URL displayed on the Web page. Collected data is sent to a Web server in response to the detected client side trigger event. See e.g., *claim 40*. In contrast, the selecting of a URL to eventually download ACM takes place before any time data is monitored or reported. Indeed, there is absolutely no correlation between the downloading of the ACM, as taught by *Himmel et al.* and the client side trigger event recited in claims 46, 57, and 68. They are at two completely different stages. Thus, it is unreasonable for the Examiner to take the position that the selection of a URL to eventually download the ACM (before any time information is monitored), as disclosed by *Himmel et al.*, is equivalent to a client side trigger event associated with a respective user, located at respective client node, selecting a URL displayed on the Web page, when the client side trigger event determines when collected data is sent to the Web server.

4. *Himmel et al.* and *Mason et al.* do not teach or suggest the recitations of claims 48, 49, 59, 60, 70, and 71.

The Examiner addresses Appellants' arguments presented in their Brief on pp. 28-30 by restating that the rejection of these claims is based upon the combined teachings of *Himmel et al.* and *Mason et al.* This response, however, does not address

the deficiencies pointed out by Appellants in the Brief, or demonstrate how the cited art, alone or in combination, teach or suggest the recitations of these claims.

In the Answer, the Examiner appears to back away from the positions set forth and maintained over several office actions: that “Himmel does not explicitly teach analyzing the collected data at the Web server; generating billing records based on the analysis of the collected data; and sending the billing records to at least one of a plurality of third party nodes,” and that *Mason et al.* does teach each of these limitations. See e.g., *Final Office Action* at 8, ¶ 26 and *Examiner’s Answer* at 5. Appellants’ Brief points out in detail why *Mason et al.* or *Himmel et al.* (admitted by the Examiner) does not teach these recitations.

Now, the Examiner asserts that *Himmel et al.* is cited to teach simply “collecting data” and *Mason et al.* is cited merely to teach “billing third party nodes (i.e., advertisers) based on collected data.” Yet, this position does not reconcile the fact that the Examiner admits that *Himmel et al.* does not teach “analyzing the collected data at the Web server; generating billing records based on the analysis of the collected data; and sending the billing records to at least one of a plurality of third party nodes,” and that *Mason et al.* does not make up for these deficiencies, as pointed out in Appellants’ Brief. Nowhere does the Examiner identify where in the prior art is taught the above limitations admitted by the Examiner that is missing from *Himmel et al.* Indeed, the Examiner admits *Mason et al.* teaches less than that presented in the Final Office Action. Accordingly, the rejection of claims 48, 49, 59, 60, 70, and 71 is improper and legally deficient, and should be reversed.

5. *Himmel et al.* and *Mason et al.* do not teach or suggest the recitations of claims 50, 61, and 72.

The Examiner takes the unreasonable position that because the use of mouse pointers to scroll the viewing area in a browser was well known, that the ability for a user to scroll to view an advertisement displayed by *Himmel et al.*'s system results in the ability for the reference to show in-view user activities that are mouse pointer position data, as recited in claims 50, 61, 72. The Examiner's position is not supported by the prior art or that which was known in the art at the time of Appellants' invention. Indeed, the Examiner offers no evidence of such a conclusion only to assert that moving a mouse to view information means mouse position data is collected as in-view user activities. This is pure conjecture, and is legally deficient. As pointed out in the Brief, *Himmel et al.* does not teach such features. See *Supplemental Brief* at 30-31. Accordingly, the rejection of these claims should be reversed and the claims allowed.

CONCLUSION

For the above reasons, the rejection of claims 40-46, 48-57, 59-68, and 70-72 should be reversed and the claims allowed.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this Reply Brief, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith,


including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to Deposit Account No. 06-0916.

Respectfully submitted,

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Dated: October 2, 2007

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